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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

No. 444

EDWARD V. DUNPHY AND ANNABELLE E. DUNPHY,
Petitioners,

vs.

GEORGE N. GRAHAM, JUDGE OF THE COURT OF COMMON PLEAS FOR STARK COUNTY, OHIO AND THE OHIO EDISON COMPANY AND THE RAVENNA REALTY COMPANY

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF OHIO

REPLY BRIEF

EDWARD V. DUNPHY,
ANNABELLE E. DUNPHY,
Pro Se.

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PETITIONER'S FINAL REPLY BRIEF

Petitioners respectfully submit they are, from Respondents' express waiver of right to file a brief, entitled to judgment and the issuance of a proper mandate herein.

The questions involved are fundamental, and go to the very roots of the traditions and ideology of the Republic.

Petitioners bona fidely purchased real estate, consisting of an improvement permanently affixed to the soil with its foundations built into the ground. At no point in the pro-

ceeding below did Respondents deny this, nor do they now deny this, nor any other of the pertinent facts alleged herein by Petitioners.

In the Courts below Respondents contended that a patent obtained and issued to them from the United States Land Office was to be given the effect of dispossessing the unalienable right of these petitioners to keep, use, and enjoy their said real estate, by reason of the fact that said patent in effect conveyed to them a Fee Simple Title in petitioners' premises.

This is clearly not so from the very nature of things of which this honorable court is enjoined to take judicial notice, to-wit:

The United States Land Office was established immediately after the Revolutionary War to provide some means for arbitrating and regulating between rival claimants for the use of land in the territory of the United States. The original thirteen States had prior to the Revolution claimed the right to regulate settlement, and after the Revolution these conflicting rights were assigned to the Republic to avoid friction between the States. But at no point in history was it even suggested or proposed that by this assignment of the right to regulate settlement that the Republic acquired Fee Simple Title.

For it is unanswerably true that the legal conception of Fee Simple Title follows only from the conquest of territories and people by a hostile power. Neither the Republic nor any of the original thirteen States can qualify as such conquerors.

If it can be assumed the Republic ever acquired a semblance of title to the lands of the territorial United States, it must have been by reason of various treaty purchases thereof from its original native Indian inhabitants. And from such a purchase the Republic could never have ac-

quired a greater claim of ownership than the native inhabitants themselves had.

The native Indian title to lands in the United States consisted of a joint right to use and occupy the soil in common with all other members of society—each individual being entitled only to whatever portion thereof he could and did actually use and occupy.

Since conquest and enslavement has never been the policy of the Republic or the Colonies the Indian Wars involving territorial disputes were merely an enforced extension of this original theory of rights in land. The Indians sought to exclude the Americans from advancing further into Indian territory. And the Americans insisted upon extending their right to settle side by side with the Indians and so acquire for themselves a measure of the benefits of the Indian conception of title to lands.

That under the proper theocratic conception of the function and purposes of the Republic it was considered this type of title to lands was an unalienable right of the People, nondelegable to any government apart from the people, is borne out in the following two great pronouncements of our forefathers:

The Declaration of Independence, July 4, 1776:

> • • • We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain *unalienable Rights,* that *among these* are Life, Liberty, and the Pursuit of Happiness. • • •

That this recitation of certain unalienable rights was not to be considered as exclusive or as limitations upon other unalienable rights reserved by the People is borne out by certain recitations later made in now historic but neverthe-

less applicable documents guaranteeing the People's Rights under the Republic.

ORDINANCE OF 1787: THE NORTHWEST TERRITORIAL GOVERNMENT: JULY 13, 1787.

Sec. 14: It is hereby ordained and declared, by the authority aforesaid, that the following articles shall be considered as articles of compact, between the original States and the people and States in the said territory, and forever remain unalterable, unless by common consent, to wit:

ARTICLE II

• • • No man shall be deprived of his Liberty or his property, but by the judgment of his peers, or the law of the land, and should the public exigencies make it necessary, for the common preservation, to take any person's property, or to demand his particular services, full compensation shall be paid for the same. And, in the just preservation of *rights* and *property*, it is understood and declared, that no law ought ever to be made or have force in said territory, that shall, in any manner whatever, interfere with or affect private contracts, or engagements, bona fide, and without fraud previously formed.

ARTICLE III

• • • The utmost good faith shall always be observed toward the Indians; their lands and property shall never be taken from them without their consent; and in their *property, rights,* and *liberty* they shall never be *invaded* or disturbed, unless in just and lawful wars authorized by Congress. • • •

Petitioners respectfully submit that it is nowhere recorded in history that Fee Simple Title to any of the territory of the United States was acquired by the Republic from the Indian natives by conquest in a war authorized by Congress.

The Greenville Treaty of August 3, 1795, is still the high-

est law of the Republic upon the subject of land titles in the present State of Ohio and reiterates the proposition herewith made by Petitioners. Article 4 of said treaty provides in effect that in order to perpetuate peace and display the great liberality of the United States the United States relinquishes all its Fee Simple claims to lands North of the Ohio River, East of the Mississippi River and West and South of the Great Lakes, and at another point in said treaty a boundary line is established between the territory governed by the Indians and that governed by the United States, without affecting the status or nature of the original conception of land titles jointly asserted by the Indians and the United States.

To further preserve the theocratic ideology of the Republic it was provided in all treaties entered into between the Republic and the Indians that only the United States should be vested with a right to pre-emption by purchase to claim whatever title in lands had been formerly claimed by the Indians. Since the Indian conception of title existed apart fram any conception of government, it necessarily follows that it was the kind of title asserted and intended to be protected by the Republic—namely that the title to lands in the Republic belongs to our common Creator—and that man's endowed unalienable right to use and occupy the same should never be taken from him upon the pretext that fictitious title of the nature of a Fee Simple title is sufficient to usurp the just ownership of the Creator.

To still further corroborate this reasoning herewith advanced by Petitioners the Ordinance of 1787 prohibited any State legislature from interfering with Congressional disposition and regulations for securing title to bona fide purchases, to wit:

ARTICLE IV

> • • • The legislatures of those districts, or new states, shall never interfere with the primary disposal

> of the soil by the United States in Congress assembled, *nor with any regulations Congress may find necessary for securing the title in such soil to the bona fide purchasers.* * * *

Clearly under this unalterable provision Congress has exclusive and implied power to make and provide regulations which secure the title in such soil to the bona fide purchasers, and not otherwise.

Petitioners are by admission of Respondents the bona fide purchasers, who without fraud, paid valuable consideration for their improvement to the land which by its permanent affixture thereto has now become real estate. As such they are invested with the highest and best possible kind of title available under the Republic, and their having been divested of full use and enjoyment thereof in the proceedings below they have been deprived of natural justice and denied a judicial proceedings according to the course of the common law, to wit:

THE ORDINANCE OF 1787:

ARTICLE II

> * * * The inhabitants of said territory shall always be entitled to the benefits of * * * judicial proceedings according to the course of the common law. * * *

To still further corroborate the position and support the arguments of Petitioners herein, the Constitution of the United States provides as follows:

ARTICLE IX

> The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people. * * *

ARTICLE X

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people. • • •

Petitioners submit in the light of the foregoing and in the light of Article VI of the Constitution which in effect ratifies and incorporates the Ordinance of 1787 and the Greenville Treaty as a part of the highest law of the Republic that their position is unanswerably sound.

Petitioners further submit the following authority:

Constitution of the United States, Article IV, Sec. 3:

• • • The Congress shall have power to dispose of and make all needful Rules and Regulations respecting the Territory or other property *belonging to the United States.* • • •

Petitioners submit that the limited and only delegated authority of the United States under the Constitution is to dispose of and make regulations respecting lands owned by and belonging to the United States. Petitioners further submit that for the General Land Office to be authorized in the premises to regulate or to claim the right to dispose of petitioners' rights in real estate by the medium of a patent issued to a third party without the payment of consideration as was attempted to be done in the present case, it shall first become incumbent upon the United States to establish that it owned said lands and/or had acquired an absolute title thereto by purchase.

In this case the United States merely treated with the Indians respecting the establishment of a governmental boudary line, and ceded any claims it might have advanced upon the theory of fee simple ownership, which it might

have asserted, if it had inherited from the first English Colonists who recognized a sovereign right in regard thereto as residing in the Crown of England.

But such a conception is contrary to the theocratic ideology of our forefathers who founded the Republic under God and for that reason is as invalid today as it would have been in the early days of the Republic.

Petitioners further submit to this honorable court that upon the status of the pleadings in the courts below that they were in each instance entitled to judgment as a matter of law, from failure of Respondents to interpose or advance any valid arguments or defenses (as the Respondents are again doing in this proceedings).

And therefore it is respectfully requested that judgment be rendered against Respondents and that these Petitioners be fully restored to their property and rights and be compensated in full for their losses and damages sustained herein.

Respectfully,

WILLIAM P. HEYNE,
Counsel for Petitioners.